No. 00-1200

In The

Supreme Court of the United States

CAROLYN BINNS,

Petitioner,

v.

WAL-MART STORES, INC.,

Respondent.

On Petition For Writ Of Certiorari To The Supreme Court Of Arkansas

REPLY TO RESPONDENT'S RESPONSE TO PETITION FOR WRIT OF CERTIORARI

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ARGUMENT

Petitioner, Carolyn Binns, files this Reply Brief addressing only one issue raised for the first time by Respondent in its Brief in Opposition to Petition for Writ of Certiorari.

On page four (4) of Respondent's brief, the Respondent speculates that one of the reasons the Arkansas Supreme Court denied the motion to vacate was, "the fact that Special Justice Fleischaier was unaware of and therefore uninfluenced by Friday, Eldredge & Clark's appearances in cases in which Wal-Mart was a nominal party." Respondent has never, prior to this filing, suggested that Special Justice JoAnn Coniglio Fleischaier was unaware of her litigation partner, Kevin Crass's representation of Respondent at the time she was sitting as a Special Justice in this matter.

Respondent attempts to infer that Special Justice JoAnn Coniglio Fleischaier was in some way insulated from knowledge regarding her law firm's representation of Respondent, Wal-Mart Stores, Inc., because she practiced in a 70 plus person law firm, Friday, Eldredge & Clark. However, a review of public records shows that Special Justice Fleischaier worked hand in hand with her law partner, Kevin A. Crass, the Friday, Eldredge & Clark attorney who was actively representing Wal-Mart Stores, Inc. in product liability cases at all times relevant to Special Justice Fleischaier's appointment in this case.

In *Boerner v. Brown & Williamson Tobacco, Co.*, 121 F.Supp. 2d 1252 (2000), a tobacco product liability case, both Mr. Crass and Special Justice Fleischaier served as co-counsel while representing the defendant tobacco

company. The case was filed in June of 1998 and Summary Judgment was granted to the defendant tobacco company on February 25, 2000, which was only 19 days before Petitioner appeared before Special Justice Fleischaier for oral argument of her case.

Mr. Crass and Ms. Fleischaier acted as co-counsel for the plaintiff in *Seeco, Inc. v. Hales*, 341 Ark. 972, 22 S.W.3d 157 (2000). This matter involved an oil and gas contract claim which resulted in an award of over $90,000,000.00. The decision of the Arkansas Supreme Court was rendered in this case on July 13, 2000, and the matter was pending on appeal throughout all relevant times when Special Justice Fleischaier was appointed on the instant case.

A cursory review of Court records establishes the close and long-term relationship between Ms. Fleischaier and Mr. Crass in that they acted as co-counsel in the following cases: *Intora-Firebird PLC, et al. v. Mueller, et al.*, U.S. District Court, Eastern District of Arkansas, Cause No. 1:99-CV-153; *Swink v. Ernest & Young*, 322 Ark. 417, 908 S.W.2d 660 (1995).

These cases bear out the point that Special Justice Fleischaier was not insulated from the fact that her closely associated partner, Kevin Crass was trial counsel representing Wal-Mart Stores, Inc. when she sat as a Special Justice in this matter.

Respectfully submitted,

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